

**STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL**



TOBACCO PRODUCT MANUFACTURER CERTIFICATION
(Pursuant to Md. Code, Bus. Reg. §§ 16-501 to 16-508)

I. GENERAL INFORMATION

Who is required to file this certification?

Any Tobacco Product Manufacturer that intends to sell cigarettes or roll-your-own (RYO) tobacco within the State of Maryland, whether directly or through any distributor, retailer, or similar intermediary.

This certification is in addition to any certificate of compliance that may be required pursuant to Maryland Code Annotated, Business Regulation Article §§ 16-401 to 16-403.

When is this certification due?

Tobacco Product Manufacturers wishing to be listed on the Maryland Tobacco Directory must execute and file an annual certification postmarked on or before April 30th of each year. Manufacturers must file a supplemental certification thirty calendar days prior to making any changes to the information provided in their annual certification. A manufacturer not previously listed on the Maryland Tobacco Directory may file a new certification at any time.

Definitions used in the certification:

- (a) “Affiliate” means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms “owns,” “is owned,” and “ownership” mean ownership of an equity interest, or the equivalent thereof, of 10 percent or more, and the term “person” means an individual, partnership, committee, association, corporation or any other organization or group of persons.
- (b) “Brand Family” means all styles of cigarettes sold under the same trademark, including cigarettes differentiated from one another by means of additional modifiers or descriptors such as “menthol”, “kings”, “100s”, or other differentiation.

- (c) “Cigarette” means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains: (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco; (2) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (3) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in item (1) of this paragraph. Cigarette includes roll-your-own tobacco (i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to or purchased by consumers as tobacco for making cigarettes). For purposes of this definition of cigarette, 0.09 ounces of roll-your-own tobacco shall constitute one individual cigarette.
- (d) “Directory” means the listing of all Tobacco Product Manufacturers that have provided current and accurate certifications that meet the requirements of Md. Code Ann., Bus. Reg. § 16-503 and have been certified by the Attorney General as in full compliance with both the Escrow Act and Md. Code Ann., Bus. Reg. §§16-501 *et seq.* and the Brand Families that are listed in their certifications.
- (e) “Escrow Act” means the Tobacco Product Manufacturers Escrow Act, as codified in Md. Code Ann., Bus. Reg. §§ 16-401 to 16-403.
- (f) “Master Settlement Agreement” means the settlement agreement and related documents entered into on November 23, 1998, by the State and leading United States tobacco product manufacturers.
- (g) “Nonparticipating Manufacturer” means any Tobacco Product Manufacturer that is not a Participating Manufacturer in the Master Settlement Agreement agreed to by most States, the major tobacco product manufacturers, and many smaller tobacco product manufacturers.
- (h) “Participating Manufacturer” means a Tobacco Product Manufacturer that is or becomes a signatory to the Master Settlement Agreement, as further qualified by the definition in Section II(jj) of the Master Settlement Agreement and all amendments to the agreement.
- (i) “Qualified Escrow Fund” means an escrow arrangement with a federally or state chartered financial institution having no affiliation with any Tobacco Product

Manufacturer and having assets of at least \$1,000,000,000 where such arrangement requires that such financial institution hold the principal of the escrowed funds for the benefit of releasing parties and prohibits the Tobacco Product Manufacturer that places the funds into escrow from using, accessing, or directing the use of the principal of the funds except as consistent with the Escrow Act.

- (i) “Tobacco Product Manufacturer” (TPM) means an entity that, after June 1, 1999, directly and not exclusively through any Affiliate:
 - (1) manufactures cigarettes anywhere that the manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is an original participating manufacturer (as that term is defined in the Master Settlement Agreement) that will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as a result of the provisions of subsection II(mm) of the Master Settlement Agreement and that pays the taxes specified in subsection II(z) of the Master Settlement Agreement, and provided that the manufacturer of the cigarettes does not market or advertise the cigarettes in the United States);
 - (2) is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or
 - (3) becomes a successor of an entity described in subparagraph (1) or (2) of this paragraph.

The term “Tobacco Product Manufacturer” shall not include an Affiliate of a Tobacco Product Manufacturer unless such Affiliate itself falls within any provisions of subparagraph (1), (2), or (3) of this paragraph.

- (j) “Units Sold” means the number of individual cigarettes sold in the State by the applicable TPM, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, during the year in question, as measured by excise taxes collected by the State on packs bearing the excise tax stamp of the State or on unstamped “roll-your-own” tobacco containers.

II. INSTRUCTIONS

General Instructions: Provide **ALL** the requested information. *The Office of the Attorney General will not process incomplete or illegible certification forms.*

Part 1: Manufacturer's Identification Provide all the requested contact information. Indicate if any field is not applicable. Provide a mailing address if different from the physical address. Identify the corporate website, and if there is none, identify any website the manufacturer uses to sell or market its products.

Part 2: Manufacturer and Certification Status

A. State whether the manufacturer is a Participating Manufacturer or a Nonparticipating Manufacturer that is in full compliance with the Escrow Act and the type of certification being submitted.

B. Identify the type of Certification being submitted:

Initial Certification- a TPM not currently listed on the Directory must submit an Initial Certification and be approved before its cigarette or RYO products can be legally sold in Maryland.

Annual Certification- all TPMs listed on the Directory and wishing to remain on the Directory must submit a certification by April 30th of each year.

Supplemental Certification- TPMs must submit a revised certification at least 30 days **prior** to any change in the information provided on this form.

Part 3: Brand Family Identification- Identify by Brand Family and brand style all cigarettes the manufacturer has fabricated, intends to sell in the State, and seeks to have included on the Maryland Tobacco Directory. Only brands that are identified may be included on the Directory.

Participating Manufacturers should list their Brand Families and indicate with an asterisk any Brand Family not intended to be sold in the State.

Nonparticipating Manufacturers must: (1) separately list each Brand Family of cigarettes manufactured by the TPM; (2) for each Brand Family list the number of Units Sold in Maryland at any time during the previous calendar year; (3) indicate with an asterisk any Brand Family that will not be sold in the State as of the date of the certification; and (4) if applicable, identify by name and address any prior manufacturers of each Brand Family provided.

Part 4: Supplemental Documentation- All Tobacco Product Manufacturers

- A. Md. Code Ann., Bus. Reg. §§16-601 *et seq.* requires that all cigarettes sold or offered for sale in Maryland be certified by the Office of the Comptroller and marked as “Fire Standards Compliant.” Provide the approval letter(s) listing all brand styles that have been FSC certified by the Office of the Comptroller.
- B. For each Brand Family of cigarettes listed in Part 3, provide a copy of the current FTC approval letter(s) for the health warning rotation plan.
- C. For each Brand Family of cigarettes listed in Part 3, provide a copy of the current CDC ingredient-listing compliance letter(s).
- D. For each Brand Family of cigarettes identified in Part 3, provide samples of the packaging, unless provided within the past three years. Electronic or photographic samples are acceptable. If packaging was previously submitted *and* has not changed, provide the date the prior samples were submitted.
- E. The Prevent All Cigarette Trafficking (PACT) Act of 2009 requires “any person who sells, transfers, or ships for profit cigarettes... into a state” to file a registration with the tax administrator of the state. If your company has not already done so, provide a copy of the PACT Act registration which was submitted to the Office of the Comptroller.
- F. If your company has not already done so, provide a copy of the current TTB Manufacturer or Importer permit issued by the federal Alcohol and Tobacco Tax and Trade Bureau to the certifying TPM. If the TPM has multiple licenses, provide a copy of each license.
- G. For each Brand Family listed in Part 3, identify the owner of the trademark. If it is not the certifying TPM, provide contact information for the owner. In addition, provide a copy of the manufacturing agreement or any other documents showing the right of the certifying TPM to manufacture the brand.
- H. Indicate if the Tobacco Product Manufacturer has ever been denied certification or ever been removed from another state’s tobacco directory for violations of the MSA or noncompliance with a state’s escrow requirements. If yes, provide a detailed explanation noting: which states, the cause for the denial or removal, and what steps have been taken to address the situation and remove any impediments to being listed on the Maryland Tobacco Directory.

Part 5: Additional Requirements for Nonparticipating Manufacturers

- A. Provide the name, address, and phone number of each licensed wholesaler that has sold, or through which the Nonparticipating Manufacturer intends to sell, its cigarette or RYO brands in Maryland. This section must be updated if the Manufacturer wishes to sell its products through additional wholesalers. Nonparticipating Manufacturers are responsible for ensuring compliance with their escrow obligation by contacting wholesalers to verify sales in the State.
- B. Verify that the Nonparticipating Manufacturer consents to being sued in Maryland if it fails to comply with the requirements of the Escrow Act. It must be registered to do business in Maryland, and if not physically located in Maryland appoint a resident agent for service of process, as required by Md. Code Ann., Bus. Reg. §16-505. Nonresident Nonparticipating Manufacturers must register as a foreign corporation and record their resident agent information with the Maryland State Department of Assessments and Taxation.
- C. Provide: (1) the name, address, and telephone number of the financial institution where the Nonparticipating Manufacturer has established a Qualified Escrow Fund pursuant to Md. Code, Bus. Reg. §16-403(a); and (2) the account number of the Qualified Escrow Fund and the sub-account number for the State of Maryland. Unless previously provided, the financial institution must provide a copy of the escrow agreement or any changes to the agreement.
- D. Identify: (1) the total amount the Nonparticipating Manufacturer has deposited into the Qualified Escrow Fund for cigarettes sold in Maryland in all previous years; (2) the date and amount of each deposit; and (3) the date and amount of any withdrawal or transfer of funds the Nonparticipating Manufacturer made at any time from the Qualified Escrow Fund.

Part 6: Execution by Authorized Designee.

The person executing the certification must be an authorized officer or agent, capable of legally binding the certifying Tobacco Product Manufacturer. The designee's name and title must be printed and the certification must be executed in the presence of an authorized notary public.

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(Pursuant to Md. Code Ann., Bus. Reg. §§ 16-501 to 16-508)

Part 1: Tobacco Product Manufacturer Identification

Company: _____

Street Address: _____

City, State, Country, Zip: _____

Mailing Address (if different): _____

Phone Number: _____ Fax: _____

E-mail Address: _____

Website: _____

Address of Manufacturing Facility: _____

City, State, Country, ZIP: _____

Name of Factory Manager(s): _____

Telephone Number of Factory Manager(s): _____ Fax: _____

Maryland Tobacco Manufacturer License Number: _____

Manufacturer's Federal Taxpayer ID Number: _____

Name/Title of Person Completing Certification: _____

Part 2: Status of the Tobacco Product Manufacturer and Type of Certification

A. The Tobacco Product Manufacturer identified above is, as of the date of this certification (check one of the following):

- ☐ A Participating Manufacturer under the Tobacco Master Settlement Agreement.
- ☐ A Tobacco Product Manufacturer in full compliance with the Escrow Act.

B. The type of certification being submitted is (check one of the following):

- ☐ Initial Certification- a Tobacco Product Manufacturer not currently listed on the Maryland Tobacco Directory must submit an Initial Certification and be approved before its cigarette or RYO products can be legally sold in Maryland.
- ☐ Annual Certification- all Tobacco Product Manufacturers listed on the Maryland Tobacco Directory and wishing to remain on the Directory must submit a certification by April 30th of each year.
- ☐ Supplemental Certification- Tobacco Product Manufacturers must submit a revised certification at least 30 days *prior* to any change in the information provided on this form.

Part 3: Brand Family Identification (attach additional sheets if necessary)

List all Brand Families and brand styles intended to be listed on the Maryland Tobacco Directory. Indicate with an asterisk (*) those Brand Families that are not intended to be sold in Maryland. Attach additional sheets if necessary.

A. Participating Manufacturers

The Participating Manufacturer identified in Part 1 manufactures the following Brand Families and affirms that each of the Brand Families are deemed to be its cigarettes for calculating its payments pursuant to the Master Settlement Agreement.

Brand Family Name	Cigarettes or RYO	Brand Family Name	Cigarettes or RYO

B. Nonparticipating Manufacturers

The Nonparticipating Manufacturer identified in Part 1 manufactures the following Brand Families and affirms that each of the Brand Families are deemed to be its cigarettes for the purposes of the Escrow Act.

Brand Family Name	Cigarettes or RYO	Units Sold in Md. in the Prior Year	Prior Manufacturer, if applicable (name & address)

Part 4: Supplemental Documentation (include as separate attachments)

- A. Provide copies of all approval letters from the Office of the Comptroller listing each brand style of cigarettes which has been certified as Fire Standards Compliant pursuant to Md. Code Ann., Bus. Reg. §§ 16-601 *et. seq.*
- B. For each Brand Family of cigarettes listed in Part 3, provide a copy of the current Federal Trade Commission approval letter for the health warning rotation plan.
- C. For each Brand Family of cigarettes listed in Part 3, provide a copy of the current ingredient-listing compliance letter from the Centers for Disease Control and Prevention.
- D. Provide a sample of the packaging for each Brand Family, unless provided in the past 3 years and the packaging has not changed since that date.

☐ Check here if you previously provided packaging samples and the packaging has not changed. Date submitted: _____
- E. If you have not previously done so, provide a copy of the registration required to be filed with the State under the Prevent All Cigarette Trafficking Act.
- F. Provide a current copy of the TPM's TTB Importer or Manufacturer Permit.
- G. For each Brand Family listed in Part 3, provide the owner of the trademark. If different from the certifying Tobacco Product Manufacturer, indicate if the owner is an Affiliate of the Tobacco Product Manufacturer. If the owner is not an Affiliate, provide contact information for the trademark owner, and a copy of all manufacturing agreements or other documents granting the certifying Tobacco Product Manufacturer the right to manufacture the cigarettes.
- H. Has the Tobacco Product Manufacturer ever been denied certification in any state or removed from a state's tobacco directory for noncompliance with the MSA or a state's escrow requirements?

☐ Yes ☐ No If yes, please attach a separate page explaining why.

Part 5: Additional Requirements for Nonparticipating Manufacturers

A. Identification of Licensed Wholesaler Stamping Agents

All cigarettes sold in Maryland must be stamped by a licensed tobacco wholesaler. List the name, address, and phone number of each licensed wholesaler stamping agent that has sold or through which the certifying Nonparticipating Manufacturer intends to sell its cigarette or RYO brands in Maryland. *(Attach additional sheets if necessary)*

Wholesaler Name	Wholesaler Address	Wholesaler Phone Number	Brands to be Stamped

NOTE: The Nonparticipating Manufacturer must update this Part 5.A if it uses distributors not identified above to sell its products in Maryland.

It is the responsibility of a Nonparticipating Manufacturer to identify all sales of its products into the State and to ensure that it has deposited sufficient funds to satisfy its escrow deposit obligations. Please contact our office if a wholesaler refuses to provide the Nonparticipating Manufacturer the information necessary to meet its legal obligations.

B. Resident Agent

All nonresident Nonparticipating Manufacturers must consent to be sued in Maryland in the event they fail to comply with the requirements of the Escrow Act and must maintain a resident agent to accept service of process in Maryland. Nonresident, Nonparticipating Manufacturers must also register as a foreign corporation and record the resident agent information with the Maryland State Department of Assessments and Taxation.

All Nonparticipating Manufacturers are required to: 1) provide notice to the Office of the Attorney General at least thirty (30) calendar days prior to termination of the authority of a resident agent; and 2) provide proof, to the satisfaction of the Office of the Attorney General, of the appointment of a new agent at least five (5) calendar days prior to the termination of the existing agent appointment. If an agent terminates the appointment, the Nonparticipating Manufacturers shall notify the Office of Attorney General within five (5) calendar days of the termination with proof of the appointment of a new agent.

Check and sign below if you have read and understand the preceding statements and your company consents to be sued in Maryland if it fails to comply with the requirements of the Escrow Act.

☐ _____ Date: _____

Name and Address of Maryland State Resident Agent:

Name: _____

Company: _____

Street Address: _____

City, State, Zip: _____

Phone Number: _____ Fax Number: _____

E-mail: _____

NOTE: The Nonparticipating Manufacturer must attach to this form a current letter from the resident agent accepting its appointment as agent.

Is the Nonparticipating Manufacturer registered to do business in Maryland as a foreign corporation or business entity?

☐ Yes ☐ No If yes, date registered: _____

Is the registration current as of the date of this certification?

☐ Yes ☐ No

C. Qualified Escrow Fund – Financial Institution

Name of Institution: _____

Address: _____

Representative Name: _____

Telephone Number: _____ Fax Number: _____

Escrow Account No: _____ State Sub-account No: _____

Has the Qualified Escrow Agreement, including all amendments, been provided to the Attorney General?

☐ Yes ☐ No Date of Escrow Agreement: _____

If the Escrow Agreement or new amendments have not previously been provided, the financial institution must provide the Attorney General a copy of the current Qualified Escrow Agreement including any amendments. **No changes to a Qualified Escrow Agreement may be made without prior authorization of the Attorney General.**

D. Escrow Deposit History for Maryland (attach additional sheets if necessary)

Date	Deposit	Balance

Have you ever made any withdrawals from the Maryland subaccount of your Qualified Escrow Account?

☐ Yes ☐ No If yes, attach an explanation on a separate sheet.

Part 6. Execution by Authorized Designee (check and initial)

- ☐ ____ I state that the tobacco product manufacturer named in Part I, as of the date of this certification, is a Participating Manufacturer in full compliance with all applicable sections of the Tobacco Product Manufacturers Escrow Act, as codified in Md. Code Ann., Bus. Reg. §§ 16-401 to 16-403.
- ☐ ____ I state that the tobacco product manufacturer named in Part I, as of the date of this certification, is a Nonparticipating Manufacturer in full compliance with all applicable sections of the Tobacco Product Manufacturers Escrow Act, as codified in Md. Code Ann., Bus. Reg. §§ 16-401 to 16-403.

Under penalty of perjury, I certify and declare that all of the statements and information contained in this certification, including but not limited to any accompanying statements or attachments herewith, are true, correct, accurate, and complete. I understand that the Attorney General may require additional information and/or documentation to determine whether the Tobacco Product Manufacturer is in compliance with all applicable State and federal laws. I am a person authorized to bind the Tobacco Product Manufacturer making this certification either under the laws of the State of Maryland or the jurisdiction where the manufacturer resides or is organized.

Authorized Officer or Agent (Print or Type Name): _____

Signature of Authorized Officer: _____

Title: _____ Date: _____

Subscribed to and sworn to before me on this ____ day of _____, _____

Signature of Notary Public: _____

City or County of: _____

My Commission Expires: _____

Mail the completed certification to:

Tobacco Enforcement Unit Attn: Aravind Muthukrishnan
Office of the Attorney General of Maryland
200 St. Paul Place, 20th Floor
Baltimore, Maryland 21202